

## Community versus Commonwealth: Reappraising the 1971 Immigration Act

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### Abstract

The 1971 Immigration Act constitutes the most important piece of legislation for the regulation of immigration to Britain. Many assume that the Act was simply a further extension of the restrictive measures established over the post-war period to end non-white immigration. Based on original archival material, I argue that the Act was established in reaction to the dilemma the government faced as a result of joining the European Economic Community and the free movement of workers against Commonwealth migrants. The Act represents the final dismantling of universal Commonwealth citizenship and, in this sense, a definitive acceptance of the end of the Empire.

**Keywords:** immigration policy; European Union; free movement; 1971 Immigration Act; Commonwealth migration

### Introduction

Britain was once dubbed as a ‘country of zero immigration’ and not without cause.<sup>1</sup> Throughout the twentieth century successive governments, regardless of party affiliation, sought to limit colonial immigration on the assumption that good race relations necessitated minimum immigration. This was the bipartisan consensus that underpinned Britain’s immigration policy for fifty years. In contrast, the 2010s see immigration squarely on the political agenda, dominating election campaigns across the party spectrum. Yet what is unique about current debates is that much of this migration is free mobility. As a result we saw free movement as a major cornerstone in Prime Minister Cameron’s EU reform negotiations, and a government committed to reducing immigration.

The current and previous Conservative led government’s strategy for restricting immigration has been to pursue a net migration target where the government seek to bring immigration down from the hundreds of thousands to the

tens of thousands<sup>2</sup>. Under the previous Conservative governments (2010-2015; 2015-2016) these efforts were led by former Home Secretary (now Prime Minister) Theresa May, but her ability to do so is due to the almost absolute discretion given to the Secretary of State laid down in the 1971 Immigration Act. This Act remains the primary instrument for the Home Secretary to demarcate who can legally enter, reside and settle in Britain and is the statutory basis for all immigration rules. Consequently, Britain's immigration policy is a flexible one, able to respond to the political will of the governing party, and this power stems from the authority enshrined in the 1971 Act.

The Act is understood to have come about due to the political elite adopting a racist logic to their policies<sup>3</sup> and/or public pressure to restrict non-white immigration<sup>4</sup>. Thus it is regarded as a further extension of the restrictive logic that underpinned the 1962 and 1968 Commonwealth Immigration Acts. Whilst the latter two statutes have received a great deal of academic attention<sup>5</sup>, the 1971 Act has, comparatively, not. This is curious given the legislative significance of the Act.

Based on archival material<sup>6</sup> I argue through an historical institutionalist lens, that the development of this instrument was not simply an extension of a racist logic. Conversely, I argue that the motivations behind the Act were in part geopolitical because the early 1970s, when the Act was devised, was a pivotal moment for a Britain preparing to join the European Economic Community (EEC). Whilst restricting further settlement of New Commonwealth immigrants was the predominant rationale for the establishment of the 1971 Act, contrary to other accounts I argue that the restrictive measure was made on the basis of the "numbers game" due to the impending wave of now permit free foreign labour from the EEC as underpinned in the provisions of the Treaty of Rome. The implications of free mobility combined with public demands to reduce colonial immigration put the government in a difficult position, whereby they were forced to make a decision between maintaining a preference for Commonwealth migrants and joining the Community. The government conceded to the latter. Such a decision was emblematic of the government's changing relationship with the Commonwealth; one that had moved from an old conception of a cohesive intergovernmental forum based on common interests, towards the favouring of a new alliance with the European Community where, by implication if not necessity, the British government finally resolved that the common bonds of the Commonwealth had eroded. The Act was the

final dismantling of universal Commonwealth citizenship and, in this sense, a definitive acceptance of the end of the Empire.

### ***Building fortress Britain***

In contrast to other Western states which facilitated immigration through formal programmes to varying degrees<sup>7</sup>, post-war Commonwealth immigration to Britain was largely spontaneous and always entirely unwanted. For the first ‘three decades of the post-war period, polling data reveal consistent majority public opposition to New Commonwealth migration’<sup>8</sup>, archival sources show uneasiness in Whitehall over non-white migration, and the scholarly literature, without exception, stresses the hostility and racism of successive British governments towards New Commonwealth migration<sup>9</sup>. Why did the British governments pursue such a relentlessly restrictive line on colonial immigration? The simplest explanation is that across British society, black and Asian immigration was perceived as a ‘problem’ in need of controlling, as demonstrated by the fact that the majority of post-war (and indeed pre-war) measures were entirely targeted at non-white immigrants. Yet such policies ultimately derived from Britain’s reluctance to relinquish the once great Empire<sup>10</sup>, a reflection of Britain’s ‘post-imperial hangover’<sup>11</sup>. For what is unique about Britain’s migration story ‘is that it was a movement of citizens within an imperial polity, rather than a movement of aliens to a sovereign territory’<sup>12</sup>. This was a framework of citizenship that was eventually abandoned as the British government’s foreign policy interests evolved and shifted.

Although migration policy had been informed by two other Acts pre 1945 – the Aliens Act of 1905 and the Aliens Restriction Act of 1914 – it was only post 1945 that ‘immigration beyond Europe became significant enough to register as a major political issue’.<sup>13</sup> Previously, citizenship had been derived from a common code of British subjecthood, but as Commonwealth countries began to gain independence, it was evident that this overarching mode of citizenship was no longer sustainable. The government had to negotiate the process of decolonialization whilst maintaining the doctrine of equal rights for all British subjects, a principle at the very core of Commonwealth identity. Thus Britain’s immigration policy essentially began in 1948, with the establishment of the British Nationality Act (BNA) which conferred British subject status – Citizen of the United Kingdom and Colonies (CUKC) – to all

members of the Empire (an estimated 600 million people), serving as a last attempt to reaffirm Britain as the leader of the Commonwealth, 'to reinforce a notion of imperial unity wobbling under the impact of decolonization'<sup>14</sup>. As the Minister of State for Colonial Affairs in the Churchill Government proudly told the House of Commons in 1954: 'In a world in which restrictions on personal movement and immigration have increased we still take pride in the fact that a man can *say civis Britannicus sum* whatever his colour may be, and we take pride in the fact that he wants and can come to the mother country'<sup>15</sup>.

Yet the BNA had a constitutional purpose and was not expected to facilitate immigration. Extraordinarily, at no stage in the debates over the Bill was the possibility entertained that substantial numbers of colonial citizens could, or would, exercise their right to permanently reside in Britain, although prominent Conservatives in the House of Lords did suggest that attempts to define a Commonwealth citizen would lead to division and legal arguments<sup>16</sup>.

Following Britain's post-war reconstruction, initially this all-encompassing citizenship proved to be advantageous for Britain's labour market. However, Britain's aspiration to preserve some hold on the empire came with some unexpected and unwanted consequences. Following the BNA, a wave of unanticipated Commonwealth migrants arrived on Britain's shores, symbolised by the infamous arrival of the Empire Windrush in 1948, although it should be noted how comparatively small such flows were in contrast to European migrants<sup>17</sup>. Nonetheless, Black and Asian immigrants' permanent settlement in Britain was undoubtedly viewed as a problem by the political elite, supported by the Royal Commission on Population<sup>18</sup> and the independent Political and Economic Planning institute who claimed that 'the absorption of large numbers of non-white immigrants would be extremely difficult'<sup>19</sup>. Yet immigration legislation, the elite argued, would undermine Commonwealth unity. As a result, during the 1950s the government attempted to limit colonial immigration through administrative measures, including incentives to colonial governments to limit the issuance of passports and travel documents, along with wider dissuasion tactics to discourage colonial immigrants from coming to Britain<sup>20</sup>. As Ian Spencer speculates, this was 'defacto immigration policy'<sup>21</sup>.

Whilst Black and Asian settlement remained an unwanted presence, the international of Britain's standing in the Commonwealth deterred the government from pursuing legislative action. In short, neither the public, the Labour Party nor the

government deemed that the ‘problem’ was serious enough yet to pay the political price for restrictions on colonial immigrants<sup>22</sup>. Alongside such developments, as migration was concerned the doctrine of *Civis Britannicus sum* symbolized a commitment to movement between the Old (white) commonwealth and Britain. Thus as Old Commonwealth countries pursued their interests within a regional rather than Commonwealth framework, so support for the doctrine declined, and in turn the barriers to immigration controls were loosened.

As rumours spread that immigration controls were imminent, a record net immigration of 191,100 was recorded for 1960-1, more than for the previous five years combined<sup>23</sup>. In turn, the Cabinet committee on colonial immigrants warned in a memo that ‘the movement was reaching a stage at which the government would be obliged to introduce legislation to enable them to control it’<sup>24</sup>. By 1961 the government conceded that this was an untenable situation in need of legislation, which came in the form of the 1962 Commonwealth Immigration Act (CIA).

The 1962 Act severely curtailed primary immigration by establishing a labour-voucher system, marking a watershed moment for Britain and the Commonwealth as a whole – for the first time the right of British subjects to enter the ‘mother country’ was restricted. Exemption from immigration controls were made on two grounds: place of birth or the issuing authority of a CUKC passport (holders of a CUKC passport issued under the authority of London were exempt). Whilst the government faced real political difficulties at this stage, ‘it is hard to disagree with the claim that racial attitudes underlay the differential treatment’<sup>25</sup>, in particular that the Irish were exempt from these controls reflects the racist underwriting behind this legislation.

While primary immigration decreased as a result of the 1962 Act, secondary immigration did not<sup>26</sup>, and by 1967 settlement of New Commonwealth citizens had greatly increased. Propelled by fears of so-called overcrowding<sup>27</sup>, this surge caused concern amongst the political elite.<sup>28</sup> Meanwhile, events outside of Britain left them in an even more contentious position.

Turbulent times were occurring in Africa; the Kenyatta government had begun an aggressive Africanization policy, where Kenyan residents without African descent were persecuted and expelled from the country. As a result, Kenyan Asians who possessed CUKC status who were exempt from 1962 CIA controls due to their passports being issued by a London authority, fled to Britain in fear of being left stateless. Troubled by an already antagonistic public, this unexpected wave of

immigration caused panic amongst the political elite. In turn, Home Secretary James Callaghan sought approval from Cabinet to introduce further legislation, including the withdrawal of the right of Kenyan CUKCs to enter Britain. He argued that it was, 'both urgent and essential' to extend controls to those 'who did not belong to this country in the sense of having any direct family connection with it or having been naturalized or adopted here'<sup>29</sup>. The pressures on social services, Callaghan argued, 'would be such that large additional expenditure would be required, and our race relations policy would be in jeopardy'<sup>30</sup>. 'Wide support', he assured ministers, 'could be expected in this country for a policy on these lines'<sup>31</sup>. Subsequently, and given that the government left up to 200,000 people effectively stateless, most would say shamelessly, the government passed the 1968 Commonwealth Immigrants Act (CIA), an Act that was 'loathed by liberal opinion and loved by the public'<sup>32</sup>.

As we have seen, Britain's post-war immigration regime was undoubtedly a restrictive one, predicated on notions of race, descent, belonging, nationality, and characterised by increasingly draconian measures. However, the rationale behind the establishment of the next and most critical Act was more labyrinthine than assumed.

### ***The final straw: the 1971 Immigration Act***

The rising political saliency of immigration in the late 1960s meant that there was potential for the 'race card' to be played in the 1970 General Election<sup>33</sup>. For the first time, immigration was the fourth most salient issue for voters in the Election.<sup>34</sup> This was in no small part due to Conservative MP Enoch Powell's contribution to the debate, when he infamously made his 'rivers of blood' speech in 1968. While Powell was sacked immediately from the shadow cabinet, 'there is little doubt that Heath accepted that the public support enjoyed by Powell necessitated a greater restrictionism in Conservative policy'<sup>35</sup>. In turn, the Conservative Party toughened up their rhetoric and pledged in their manifesto to give the Home Secretary 'complete control over the entry of individuals into Britain', promising that 'there will be no further large scale permanent immigration'<sup>36</sup>. The Conservatives were rewarded by the public at the 1970 General Election<sup>37</sup> with an unexpected victory, gaining an estimated increment of 6.7 per cent in votes because many 'perceived them to be the party more likely to keep immigrants out'<sup>38</sup>.

With an electoral pledge to curtail further immigration, action was needed but there was at the same time an imperative interest in preserving some hold of the Commonwealth, as Home Secretary Reginald Maudling argued, '[there is a case] on kith and kin grounds, for special provision for those Commonwealth citizens who have an ancestral connection with the UK'<sup>39</sup>. Yet it was difficult to achieve this without 'discriminating between different members of the Commonwealth'<sup>40</sup>. The panacea was to pass an Act which included an exemption through patriality for those with a grandparent or parent born or naturalised in Britain<sup>41</sup>, a mechanism 'clearly designed to secure access for Australians, Canadians and New Zealanders while denying it to the rest of the Commonwealth'<sup>42</sup>. The status quo was retained; the objective to limit unassimilable Colonial immigrants persisted.

The 1971 Act represents the final deterioration of universal Commonwealth citizenship, and essentially 'went as far as it could in explicitly diminishing the former privileges of Commonwealth citizens'.<sup>43</sup> Furthermore, the Act gave new unfettered powers to the Home Secretary by bestowing legal authority to grant leave to remain and make immigration rules. Such power remains in place today. The Act also gave new powers to deport Commonwealth migrants, and created new barriers so that Commonwealth migrants would need a work permit for a specific job, with only skilled immigrants being issued a permit. In effect, this meant that the criteria for permits for Commonwealth citizens would be stiffer than for aliens<sup>44</sup>:

'Through this reconstruction of subjecthood, the Act legally differentiated between the familial community of Britishness composed of the truly British—those descended from white colonizers and the political community of Britishness composed of individuals who had become British through conquest or domination. The latter community discovered that as a result of the 1971 Immigration Act, their British nationality amounted to little more than a name on a passport and that their access to Britain was restricted in much the same way as it was for aliens.'<sup>45</sup>

As controversial as the Act was, as a control mechanism it was redundant; the previous two statutes had effectively halted New Commonwealth flows<sup>46</sup>, and settlement had already decreased by roughly 1,000 between 1969 and 1972.<sup>47</sup> In turn, the Act was criticised for being a 'sop to racial prejudice' because it would have little effect on numbers<sup>48</sup>, and faced heavy criticism from the Labour Party<sup>49</sup> – somewhat hypocritically given that 'the blatantly racist aspects of the patriality clauses' of the

Act were ‘foreshadowed’ in Labour’s own 1968 CIA<sup>50</sup> – and NGOs<sup>51</sup> both on grounds of racial discrimination, and the new unfettered powers of the Home Secretary:

‘It charts the dangers of injustice and abuse to be found in an executive discretion that can, and does, operate outside, and even in contradiction to, the recommendations of the Courts. It is a discretion almost totally unfettered by independent scrutiny and which lies beyond the safeguards of liberty.’<sup>52</sup>

Aside from criticism within Parliament, the Act also generated interdepartmental tensions, with the Treasury being particularly opposed, being concerned that the additional manpower needed as a consequence of the Act, would be disproportionate to the outcomes:

‘ Political factors apart, the papers do not seem to me to advance any arguments which would justify incurring additional public expenditure of the order of £400,000 or £500,000 a year at a time of financial stringency. However, given that the decision has been made on political grounds, I do not think there is any point of detail to which we should object.’<sup>53</sup>

The DEP similarly raised concerns stating that they could not meet the extra cost within their public expenditure budget. At the heart of the Treasury’s objection was that the Bill would not actually achieve its objective of reducing Commonwealth immigration and that flows were likely to remain the same. Nonetheless, the ‘feeling in the [Conservative] Party [was] for no more immigration at all...it has proved impossible to reassure the public’.<sup>54</sup> Thus despite widespread opposition, the Act passed and remains the principal statutory instrument to regulate immigration today.

It is not an unreasonable assumption then that the Act was merely an extension of the racial demographic logic which had punctuated the previous 25 years, and represented a final bid to curtail non-white settlement. The implications of the Act certainly support this, and there is no contesting that the Act had the overriding objective to limit as far as possible the settlement of non-white immigrants. Yet, archival material suggests an alternative, more nuanced, rationale for the formulation of the Act, to which we now turn.

### ***The pivotal moment: Joining the community***



Notwithstanding the general concern to limit colonial immigration, the 1971 Act was principally motivated by the “numbers game”. With 1973 came a pivotal and defining moment for Britain – acceptance to the European Economic Community (EEC). Leading up to accession the government undertook a long consultation on the possible areas of contention, as well as law and policy that would need to be adapted to align with the Community’s body of statutes. It was such deliberations that led to the most important piece of immigration legislation in Britain today. Indeed, ‘by a highly symbolic coincidence’, on the same day as the Act received royal assent, Britain entered the EEC<sup>55</sup>.

The establishment of the 1971 Act was symbolic of Britain’s changing geopolitical standing. Whilst the Commonwealth had been the cornerstone of Britain’s foreign policy agenda throughout the twentieth century, the government now favoured a new alliance with the emerging European Community. By implication, if not necessity, the British government finally resolved that the common bonds of the Commonwealth had eroded. Whilst the 1971 Act was first and foremost a immigration control mechanism, the rationale for the legislation was a reflection of where Britain’s interest lay geopolitically.

As Richard Leach wrote in 1973, ‘Great Britain is perhaps unique in that for over 200 years she has been associated in some way with other lands and people around the entire globe’.<sup>56</sup> For a long time the most consequential relationship for Britain was with the Commonwealth. Indeed ‘Britain’s role in the Commonwealth is as unique as the presence of the Commonwealth itself, since Britain was the founder and the mother of the Parliamentary system which unified Commonwealth countries’.<sup>57</sup> As a result, Britain considered the obligations she assumed for the Commonwealth to be binding, ‘morally if not legally’.<sup>58</sup>

For both the British elite and public, the Commonwealth was viewed as the most important relationship throughout the early twentieth century, both in terms of collective identity and trade. The Commonwealth was most important to the average Briton during the World Wars when there was a resurgence of passion for the Commonwealth<sup>59</sup>, made more acute, amongst the public at least, following Britain’s rejected application to join the EEC in 1963.

Yet the 1950s saw major changes which had loosened the bonds of the Commonwealth, including the independence of Pakistan, India and Ceylon; the decision in 1949 to allow India to remain a member of the Commonwealth as a

republic and in turn ending the allegiance to the Crown; and the regionalization of Commonwealth defence policies, beginning with the Washington Treaty establishing NATO. As a result, by the 1960s the British government was disillusioned as members of the Commonwealth pulled away from Britain. Furthermore, economic turbulence in 1960s Britain compelled the government to reevaluate Britain's obligations to the Commonwealth<sup>60</sup>. Nonetheless, members of the Commonwealth were still regarded as Britain's chief allies.

The allegiance to the Commonwealth was a key factor as to why Britain was so resistant to the notion of European integration, encapsulated in 1957 by Prime Minister Harold Macmillan when he stated that, 'if there should at any time be a conflict between the calls upon us, there is no doubt where we stand; the Commonwealth comes first in our hearts and in our minds'.<sup>61</sup> Whilst Britain was happy to lead on intergovernmental initiatives such as the establishment of the Organisation for European Economic Cooperation (OEEC) and being a keen supporter of the Treaty of Brussels, the government was skeptical about any supranational implications of European cooperation.<sup>62</sup> Yet it was becoming apparent how debilitating such reluctance to European integration was for Britain. Growth rates amongst the Six surpassed those in Britain<sup>63</sup>, and the government was beginning to realise that their global influence was diminishing:

'The Community may well emerge as a power comparable in size and influence to the United States and the USSR. The pull of this new power bloc would bound to dilute our influence with the rest of the world, including the Commonwealth...The independence which we have sought to preserve by remaining aloof from European integration would be of doubtful value, since our diminished status would suggest only a minor role for us in international affairs.'<sup>64</sup>

It was such sentiments that led to Britain's first application to join the EEC in 1963. Evidently Britain's application was rejected in part because of Britain's reluctance to abandon the Empire mentality. As De Gaulle said of the matter, Britain must 'transform herself...without restriction or reservation, and prefer the E.C to every other connection'.<sup>65</sup> Although Britain failed to join the Community, the attempt to re-align to a new international bloc left a legacy of bitterness among many Commonwealth members<sup>66</sup>, further propelling their efforts to break away from Britain's hold. Although decolonization was presented as a 'triumph of British

policy', the broadening of the Commonwealth clearly made it harder for Britain 'to bend the Commonwealth to its own purposes now that Britain and the old dominions (Canada, Australia and New Zealand) were in a minority'.<sup>67</sup> The ties that bound the Commonwealth were unraveling, trade across the Commonwealth was stagnant and the British government feared their international standing was diminishing. It was such a critical juncture which led Prime Minister Harold Wilson to announce his intention to submit a second application to the Community in November 1966, and for Britain to turn its back on the Commonwealth once and for all.

Although in 1967 Prime Minister Wilson claimed that 'the Treaty of Rome in itself would have no direct effect on what we ourselves do about Commonwealth immigrants'<sup>68</sup>, as a consequence of joining the EEC Britain would have an unlimited pool of now permit-free foreign labour. In a political context of rising public concerns over immigration mentioned above, such an influx of EEC workers alongside further Commonwealth migration was seen as politically untenable, and raised a major dilemma for the British government, which ultimately led to a wider discussion on the future of the Commonwealth and Britain's role and relationship within it.

Such introspection began with an enquiry into how Commonwealth countries would react if Britain were to accede to the Community. A Foreign Office report found that the damage had effectively been done following Britain's rejected application for joining the Community in 1963, as Commonwealth governments felt Britain's membership was 'inevitable', and therefore 'with the possible exception of the West Indies are unlikely to react strongly to a decision to initiate negotiations'.<sup>69</sup> Nonetheless concerns were raised over the implications of Britain's accession for Commonwealth migration.

Whether Commonwealth immigrants would enjoy the right to free mobility in the EEC created confusion in Westminster, a query first raised by Home Secretary Roy Jenkins. In response, Merlyn Rees MP stated that he did not foresee that this would be an issue, given that Commonwealth citizens had a requirement of five years residency before being allowed to register as a citizen of the UK and Colonies.<sup>70</sup> Rees ultimately resolved that the matters of citizenship were 'extremely complicated and therefore are not worth fighting about'<sup>71</sup>

Nonetheless, the issue remained unclear. The government assumed that many Commonwealth citizens would not want to work in other Member States due to language difficulties and 'social differences', although the DEP conceded that this

would only be the case as long as employment remained stable in Britain.<sup>72</sup> On the other hand, Home Secretary Jenkins suggested that Britain's entry into the EEC 'might well be advantageous to Commonwealth immigrants who had settled in this country, some of whom might well be attracted by employment in Europe'<sup>73</sup>, but that this would nonetheless 'be only a slight political compensation for the implied change in our immigration arrangements resulting from the priority which would have to be given to EEC nationals over Commonwealth'.<sup>74</sup>

With the policy implications of joining the EEC becoming apparent, ramifications which would according to the Home Secretary be 'highly embarrassing to the government'<sup>75</sup>, it was resolved that an enquiry into the consequences for Commonwealth immigration would need to be undertaken. Prime Minister Wilson also conceded that Cabinet must provide material for public discussion of the approach to Europe, 'since difficulties of presentation would arise in particularly sensitive areas e.g. political and social problems of *immigration policy* and the wider powers of Community institutions'.<sup>76</sup> Indeed, Prime Minister Wilson resolved that 'Community law had little direct effect on the ordinary life of private citizens...the main impact of Community law would be in the realm of trade, customs, restrictive practices and *immigration*'.<sup>77</sup>

The Home Office led the report and confirmed that EEC nationals would have priority over Commonwealth citizens for jobs. It seems the point of confusion was over the term 'geographical attachment', as well as nationality, in the EEC provisions of EEC citizenship. Whereas the definition of citizenship in Britain was largely an 'empty shell'<sup>78</sup>, based on residency, EEC citizenship was derivative of national attachment. Indeed whilst the Six each had their own principle of nationality, the British people had never enjoyed a modern legal nationality of their own, due to the complex framework established and perpetuated from the 1948 BNA.<sup>79</sup> This discrepancy between the definitions of citizenship was the source of the inconsistencies in immigration policy between the EEC and Britain and ultimately led to a new conception of British citizenship.<sup>80</sup>

Aside from citizenship, the government found that current immigration controls would have to be brought in line with EEC regulations, highlighting Britain's island mentality with its focus on external border controls:

'[Joining the EEC] might lead to pressure for the adoption of a system of immigration control more on continental lines, with the emphasis on internal

controls rather than at the point of entry; and in any event in time it might prove impracticable to maintain our present methods.’<sup>81</sup>

Furthermore, elites were fearful that the power to deport those not economically active would be at stake, as ‘under the EEC rules the power to deport must not be invoked to serve economic ends’.<sup>82</sup> It was however concluded that ‘we could presumably deport someone who, it subsequently transpired, had come to live off social security benefits’, an issue, it seems, which remains politically unresolved, and one which Prime Minister Cameron placed squarely on the agenda in his EU reform negotiations.

As accession approached in the early 1970s, now familiar fears of EEC nationals coming to Britain to “welfare shop” were on the horizon.<sup>83</sup> Some believed that EEC nationals would place a burden on public funds, namely because Britain was exceptional in comparison to other EEC members in that it provided social security assistance to anyone regardless of nationality. It was feared that EEC nationals might be attracted to Britain specifically for this reason.<sup>84</sup> The government was nonetheless conscious that they could not deprive any migrant of social security benefits as it would undermine the logic of inclusion in the welfare state.

Despite fears over the incompatibility between social security systems across the Community, following an enquiry into Belgium’s experience under the provisions of the Treaty of Rome (Belgium was regarded as the most comparable country to Britain), it was concluded that Britain would not face any difficult problems with respect to immigration controls but that ‘the major difficulty would be the political problems arising from our policy on Commonwealth migration’.<sup>85</sup> As a result of this impending wave of permit-free labour, the British government resolved that EEC nationals would have to have priority in filling labour market shortages over Commonwealth citizens, although it was noted that,

‘Given the small scale of entry of Commonwealth workers at present, and the fact that many of them have the special qualifications called for under category B, it seems unlikely in practice that EEC priority would be significant, since these are in universal short supply’.<sup>86</sup>

Yet while the Home Office repeatedly claimed that immigration flows from the EEC would be small<sup>87</sup>, it was found that prior to accession EU migrants were granted a large proportion of work permits; 23,000 work permits a year (representing 40 per cent of the total permits to foreigners) were issued to EEC nationals.<sup>88</sup> Of these 8,600

went to Italians, and this figure was rising.<sup>89</sup> This was unexpected and in light of this impending wave of permit-free labour, Heath rejected a proposal to increase the issuance of non-EEA work permits from 3,500 to 5,500 on the grounds that this figure was unjustifiably high.<sup>90</sup> Perhaps to Heath's relief, the Chairman of the official Committee on Britain's Approach to Europe noted that 'it may be expected that such factors as language and climate would militate against any large influx of Italian labour into this country'.<sup>91</sup> Key to the government's evaluations of the implication of free movement was that 'in practice more European nationals than Commonwealth nationals were already admitted to the UK', and therefore the 'basic change between EEC nationals and Commonwealth nationals 'was more apparent than real in view of the existing pattern of immigration'.<sup>92</sup>

The politics surrounding such an explicitly controversial preference for EEC nationals over Commonwealth citizens did not go unnoticed in Parliament or Whitehall, although the easing of immigration restrictions on over 200 million people was subject to surprisingly little public discussion<sup>93</sup>. It was acknowledged that problems could ensue at a local level if unemployment was particularly high, due to competition from EEC nationals. The government was also aware that the trade unions would most likely be alarmed at the prospect of an EEC national coming to Britain on the basis of only a job advertisement<sup>94</sup>, although it was noted that the Trade Union Congress's concerns were now 'less acute' than they previously had been in Britain's first bid for membership.<sup>95</sup>

First and foremost, being both the leader of the Commonwealth and an EEC Member State now put the government in a geopolitically awkward position:

'It would be politically untenable to put Commonwealth citizens in general so much at a disadvantage with foreigners, but socially disastrous to throw the doors as widely open to Commonwealth citizens in general as to nationals of other member states-and the middle course of lifting the control only for citizens of the old Commonwealth countries (to which there would be practical objection) would offend against the principle that control should apply equally to the citizens of all overseas Commonwealth territories.'<sup>96</sup>

This proved to be very problematic for the government. Asked whether priority would be given to EEC nationals over Commonwealth citizens, 'consistently ministers' replies sought to duck the issue'.<sup>97</sup>

There was general agreement amongst the Cabinet that ‘there would be grave objection of principle to amending Commonwealth policy through the introduction of differentiation on the grounds of colour between immigrants from different Commonwealth countries’.<sup>98</sup> This represented a major juncture for the British government, where assessing Britain’s role in the Commonwealth came to the fore.

These were the ‘formative years’ of Commonwealth reflection and the discussions amongst the political elite reveal ‘the government’s disillusionment with, and skepticism about the Commonwealth’.<sup>99</sup> It was felt that as Commonwealth membership expanded, the Commonwealth was ‘becoming less viable as a forum for inter-governmental consultation and discussion’<sup>100</sup>, leading to a major inquiry into the value of the Commonwealth to Britain led by the Foreign Office and the Commonwealth Office (merged in 1968).

Whilst the Commonwealth Office perhaps unsurprisingly touted the continual relevance of the Commonwealth, the Foreign Office was skeptical; support for the ‘Commonwealth in Britain was perceived by the department as a minority view’, and memories of a ‘shared collective history’ would weaken.<sup>101</sup> The Commonwealth Secretary suggested that whilst the Commonwealth connection still had ‘substantial material and political value for us...there had been major changes in the Commonwealth in recent years, and we should make it clear that we were not prepared to sustain the Commonwealth whatever the cost to us might be’.<sup>102</sup> The old concept of the Commonwealth, of a cohesive body with common interests in defence and trade, had dissipated and arguments about safeguarding Commonwealth interests had given way to the view that Britain’s interests must prevail. Such sentiments filtered through to immigration policy.

A newly elected Prime Minister Heath had one primary goal above all else – to secure Britain’s membership in the Community<sup>103</sup>. It would therefore ‘be essential to avoid giving any impression that the Government were half-hearted in their decision’.<sup>104</sup> Thus for Heath free movement of labour consequently fell,

‘...into the second category i.e. questions to be discussed after we have joined. It is important that nothing should be said (particularly at this pre-negotiation stage) that casts doubt or which appear to add to the list of matters on which we wish to negotiate with the Six.’<sup>105</sup>.

From the government’s perspective, the final political benefit was that in contrast to Commonwealth workers most European workers did not settle in Britain. :

‘...for the most part they [Europeans] did not settle here as did immigrants from the Commonwealth. It seemed improbable that these patterns would change and unlikely that immigration of European workers in the future would be of a scale which would cause any serious political or industrial difficulty...indeed to the extent that our economy was suffering from a shortage of labour in the longer term, the immigration of further workers from Europe was to be welcomed on grounds’.<sup>106</sup>

Emblematic of a time where governments across the West sought to attract “labour not people”, the assumed temporary nature of European immigration unsurprisingly served to reinforce the government’s preferential decision.

With a potentially large pool of unlimited EEC immigration imminent, it was finally resolved that Commonwealth settlement migration must be curtailed. Thus the 1971 Act was, in part, a manifestation of Britain’s conflicting geopolitical interests; to be the leader of a now crumbling Empire, or to be a fully engaged member of an increasingly powerful supranational institution. Ultimately the government went with the latter, believing that ‘the political gains outweigh the political costs’<sup>107</sup>, hence the final dismantling of universal Commonwealth citizenship and, in this sense, a definitive acceptance of the end of the Empire<sup>108</sup>.

## **Conclusion**

Whilst the racial demographic logic was the basis of Britain’s post-war immigration policy, the final dismantling of Commonwealth citizenship with the passage of the 1971 Act stems from a shift in international allegiances and geopolitical positioning. If a piece of legislation has ever explicitly demonstrated Britain’s abandonment of the Commonwealth as its primary inter-governmental institution, it was this statute. The new geopolitical positioning led to the government having to make a choice between an Empire that it had fought to retain and an economically successful and powerful supranational bloc. The government evidently chose the latter, in turn ending Britain’s policy of Commonwealth preference. The accession to the EEC in 1973 marked a new era of transnational allegiances, based on mutual economic and trading interests, as opposed to a shared colonial history, and Britain’s immigration policy reflected this shift.



The discrepancy between EEC citizenship and those holding CUKC status forced the government to re-evaluate the notion of British citizenship which revealed the inconsistencies and contradictions between descent, belonging, civic participation and ultimately the mix between *jus sanguis* and *jus soli* foundations. A concept which neither defined British national identity, nor matched Britain's civic rights, was a remnant of the Commonwealth which was largely 'an empty shell, a politico-legal category, rather than a civic identity'.<sup>109</sup> The Act lay the way ten years later for Prime Minister Thatcher to once and for all abolish Britain's fragmented colonial citizenship in place of a new citizenship exclusively for the UK.

Without doubt Britain's post-war immigration policy was underpinned by racialism and the 1971 Act was an emblem of this. But the foremost statute was, at the very least, partly driven by wider foreign policy interests, a significant fact which has been overlooked in this narrative. This is important as it demonstrates that immigration policy is driven by multitude of factors. Studies of immigration policymaking are too often conducted in silos, with little appreciation for the wider political agenda. Indeed 'Britain's search for a viable relationship with the European Community, and contemporaneous changes in the British Empire and Commonwealth, are usually treated as two quite distinct and separate fields... This has tended to obscure the extent to which developments in the one area of British foreign policy influenced events in the other'.<sup>110</sup>

These findings demonstrate the necessity for scholars to look beyond the overt political surface and delve into the black box of policymaking, where the by-product rationales of immigration policy are so often found. Ultimately immigration policy is rarely confined to the issue at hand, but is rather exemplary of the multitude of policy drivers affected by the economic, political, social and international spheres.

The Act itself and the geopolitical rationale behind the statute has had major effects, not least because it remains the principal instrument for making policy. Had Heath retained the Commonwealth preference, today's foreign-born population may look markedly different. What is remarkable is just how reminiscent the current debate is to the debate at the time of this critical juncture; the numbers game persists, and as EU mobility has increased so the current government have clamped down on non-EU routes where Commonwealth migrants now transit. The symbolic decision to abandon the Commonwealth in favour of the EEC effectively ushered in today's immigration debate. Such a major decision, which received so little public attention at

the time, is now dominating the political and public agenda. Indeed, the 2016 EU Referendum result, which was manifestly influenced by debates around EU free movement, has heralded Britain's eventual withdrawal from the Union, and thus like the Commonwealth, we will see a farewell to Britain's involvement in the once prized Community.

## Notes

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<sup>1</sup> Freeman, "Commentary," 297.

<sup>2</sup> HM Government, 'The Coalition,' 21.

<sup>3</sup> Paul, *Whitewashing Britain*; Hampshire, *Citizenship and Belonging*.

<sup>4</sup> Hansen, *Citizenship and Immigration*

<sup>5</sup> Hampshire, *Citizenship and Belonging*; Hansen, *Citizenship and Immigration*; Hansen, "The Kenyan Asian".

<sup>6</sup> Collected between 2009 and 2012 from the National Archives, Kew London.

<sup>7</sup> For example, guestworker programmes in Germany; Layton-Henry, *Politics of Immigration*, p. 12

<sup>8</sup> Hansen, *Citizenship*, p. 4

<sup>9</sup> See Paul *Whitewashing*; Spencer *British Immigration*; Hampshire *Citizenship and Belonging*; Messina *Race and Party*; Layton-Henry, *Politics of Immigration*.

<sup>10</sup> Small and Solomos, "Race and Paradigms", p.237.

<sup>11</sup> May, "Commonwealth", p. 83.

<sup>12</sup> Hampshire, *Citizenship and Belonging*.

<sup>13</sup> *Ibid*, p. 9.

<sup>14</sup> Carter et al, "Racialization", p.142.

<sup>15</sup> Parliamentary Debates (commons) (532), col. 827, 5 November 1954

<sup>16</sup> Dean, "Coping with Colonial", p.317.

<sup>17</sup> Approximately 2,000 Black UK and Colonies arrived each year between 1948 and 1953, in contrast to estimates of 30,000-50,000 Irish immigrants per year and by 1950 almost 74,000 European workers, Carter et al, *Racialization*, p.147.

<sup>18</sup> Layton-Henry, *Politics*, p. 28.

<sup>19</sup> Political and Economic Planning, "Population Policy in Great Britain", 1948.

<sup>20</sup> Spencer, *British Immigration Policy*, p. 31

<sup>21</sup> *Ibid*, p. 8

<sup>22</sup> Carter et al., "Racialization", p. 147.

<sup>23</sup> Layton-Henry, *Politics of Immigration*, p. 13

<sup>24</sup> TNA CAB 128/35, CC (61) 29, 30 May 1961

<sup>25</sup> Hampshire, *Citizenship and Belonging*, p. 29

<sup>26</sup> Layton-Henry, *Politics of Immigration*, p. 12.

<sup>27</sup> TNA, HO 344/42, Letter to Minister of State, 9<sup>th</sup> November 1961; TNA, HO 344/42, Letter to Sir Charles Cunningham on issue of overcrowding, 9<sup>th</sup> November 1961.

<sup>28</sup> TNA HO 344/193, 'Commonwealth Immigration-1967', Press Notice, undated.

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- <sup>29</sup> TNA, CAB 128/43, CC 68 (13), 15 February 1968
- <sup>30</sup> TNA, CAB 128/43, CC (68) 14, 22 February 1968
- <sup>31</sup> Ibid
- <sup>32</sup> Hansen, "Kenyan Asians", p. 821.
- <sup>33</sup> Saggar, *Race and Representation*.
- <sup>34</sup> Geddes, *The Politics of Migration*.
- <sup>35</sup> Hansen, *Citizenship*, p. 190
- <sup>36</sup> Craig *British Manifestos* p.127
- <sup>37</sup> Layton-Henry, *Politics* p. 84
- <sup>38</sup> Studlar, "Policy voting", p.46.
- <sup>39</sup> TNA CAB 129/154, cp (70) 126, 31 December 1970
- <sup>40</sup> Ibid.
- <sup>41</sup> Home Office, *Immigration Act 1971*, 2.
- <sup>42</sup> Hansen, *Citizenship*, p. 195; With the exception of the special voucher scheme, whereby those who are not partial may be admitted for settlement if they retrieve a special voucher issued by a British Government representative overseas. This mainly applied to those CUKC's affected by the Africanization policies; Those Commonwealth citizens who had resided in the UK for five years could apply for registration.
- <sup>43</sup> Cohen, "Shaping," 365.
- <sup>44</sup> Hampshire, *Citizenship*, p. 39
- <sup>45</sup> Paul, *Whitewashing*, 181.
- <sup>46</sup> Spencer, *British Immigration*, 143.
- <sup>47</sup> TNA: HO 344/63, 'Summary of Commonwealth Immigration- New Commonwealth (excluding UK passport holders', undated.
- <sup>48</sup> Parliamentary Debates (Commons) (813), cols. 120-4, 8 March 1971
- <sup>49</sup> TNA: HO 344/97, *Citizenship, Immigration and Integration: Opposition Green Paper*, Labour Party, 1972.
- <sup>50</sup> Layton-Henry, *Politics*, p. 89
- <sup>51</sup> TNA: FCO 50/484, Letter to Prime Minister (Heath) from Brockway (president of Liberation), 14<sup>th</sup> December 1972
- <sup>52</sup> Prisons Reform Trust, 'A Law Unto Themselves: Home Office Powers of Detention', (London: The Trust, 1984) 1.
- <sup>53</sup> TNA: T227/3216, 'Official Committee on Immigration and Community Relations. Proposed Immigration Legislation: ICO (70)5, 6 & 8. Brief for meeting 8<sup>th</sup> December. Letter to Miss Forsyth from J.D Skinner, 4<sup>th</sup> December 1970.
- <sup>54</sup> TNA: T 353/68, 'Ministerial group on Commonwealth immigration control, general paper 1973, Letter to the Treasury from Sir Alec Douglas-Home, 6 March 1973.
- <sup>55</sup> Spencer, *British Immigration Policy*, p. 144
- <sup>56</sup> Leach, "Britain, Commonwealth," p. 173.
- <sup>57</sup> Ibid.
- <sup>58</sup> Ibid, p. 174.
- <sup>59</sup> Ibid, 179.
- <sup>60</sup> Maitland, "Overview", p.6.
- <sup>61</sup> *The Times*, 8 July 1957, p. 8.
- <sup>62</sup> May, "Britain's turn", p.31.
- <sup>63</sup> Ibid, 32.
- <sup>64</sup> Report of the European Economic Association Committee, 25 May 1960, TNA: CAB 134/1820.

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- <sup>65</sup> Chares De Gaulles, press statement, January 1963
- <sup>66</sup> Maitland, "Overview".
- <sup>67</sup> May, "Britain's turn," 32.
- <sup>68</sup> TNA: CAB 164/460, J.A Robinson, 'Free Movement of European Workers and Commonwealth Migrants', Memorandum, 30<sup>th</sup> December 1969.
- <sup>69</sup> TNA CAB 129/129//16, 'Britain ad the EEC: likely reactions of Commonwealth countries', 27 April 1967.
- <sup>70</sup> TNA: CAB 164/460, Hansard, column 1536-8, 18<sup>th</sup> December 1969.
- <sup>71</sup> Ibid.
- <sup>72</sup> TNA: PRO CAB 164/460, Revised Draft brief on "EEC: free movement of Labour and Immigration", 26<sup>th</sup> January 1970.
- <sup>73</sup> TNA PRO CAB 128/42/20; Conclusions of a meeting of the Cabinet held at 10 Downing Street, 13 April 1967.
- <sup>74</sup> TNA PRO CAB 129/129/8; Europe: further implications for mobility of labour and immigration policy, 1967 p. 78
- <sup>75</sup> TNA PRO CAB 128/42/20; Conclusions of a meeting of the Cabinet held at 10 Downing Street, 13 April 1967.
- <sup>76</sup> TNA PRO CAB 128/42; Conclusion of a meeting of the Cabinet held at 10 Downing Street, 27 April 1967. (My italics).
- <sup>77</sup> Ibid; (my italics).
- <sup>78</sup> Hampshire, *Citizenship*, p.12.
- <sup>79</sup> The Roundtable, "Britain, Commonwealth, Europe," 48.
- <sup>80</sup> The acceptance that the UK's citizenship was inconsistent with other EEC members, and that this inconsistency prevented the UK from definitively basing their immigration laws on citizenship were wholly realized later, see TNA CAB 129/195/12, 'British Nationality Law: Discussion of Possible Changes', Green Paper by the Secretary of State for the Home Department, April 1977.
- <sup>81</sup> TNA CAB 129/128/48; Implications of entry into Europe for mobility of labour and immigration policy, 11 April 1967.
- <sup>82</sup> TNA CAB 129/129/8; Europe: further implications for mobility of labour and immigration policy, 1967
- <sup>83</sup> TNA: CAB 164/460, Study Group on Mobility of Labour and Social Policy, Note on the Implication of Entry into Europe for Mobility of Labour, Migration and Employment, undated.
- <sup>84</sup> Ibid.
- <sup>85</sup> TNA CAB 128/42; Conclusions of a meeting of the Cabinet held at 10 Downing Street, 27 April 1967.
- <sup>86</sup> TNA: CAB 164/460, "EEC: Immigration", Note by Home Office, no date.
- <sup>87</sup> TNA: CAB 164/460, Mr Luard quoting PM, "European Economic Community", Minutes from Hansard Commons, 16<sup>th</sup> February 1970.
- <sup>88</sup> TNA: CAB 164/460, Study Group on Mobility of Labour and Social Policy, Note on the Implication of Entry into Europe for Mobility of Labour, Migration and Employment, no date.
- <sup>89</sup> Ibid.
- <sup>90</sup> TNA: FCO 50/484, "Immigration Policy", Cabinet Minutes, 23<sup>rd</sup> January 1973.
- <sup>91</sup> TNA CAB 129/128/49; Implications of entry into Europe for mobility f labour and immigration policy, 11 April 1967.
- <sup>92</sup> TNA CAB 128/42/20; Conclusions of a meeting of a Cabinet held at 10 Downing Street on 13 April 1967.

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- <sup>93</sup> Spencer, *Immigration*, p. 144
- <sup>94</sup> TNA CAB 164/460, Study Group on Mobility of Labour and Social Policy, Note on the Implication of Entry into Europe for Mobility of Labour, Migration and Employment, no date.
- <sup>95</sup> TNA CAB 128/42.20; Conclusions of a meeting of a Cabinet held at 10 Downing Street on 13 April 1967.
- <sup>96</sup> TNA CAB 164/460, Study Group on Mobility of Labour and Social Policy, Note on the Implication of Entry into Europe for Mobility of Labour, Migration and Employment, undated.
- <sup>97</sup> TNA FCO 50/358, Negotiating brief for UK entry into EEC effects on immigration in the UK and probable effects on immigration controls if Britain joins EEC.
- <sup>98</sup> TNA CAB 128/43; Conclusion of a meeting of the Cabinet held at 10 Downing Street on 27 April 1967.
- <sup>99</sup> Ashton, "British Government Perspectives," 76.
- <sup>100</sup> *Ibid*, 84.
- <sup>101</sup> *Ibid*, 87.
- <sup>102</sup> TNA CAB 128/42; Conclusions of a meeting of the Cabinet held at 10 Downing Street on 27 April 1967.
- <sup>103</sup> J. Campbell, *Edward Heath: A biography* (London: Jonathan Cape, 1993, pp. 336-41)
- <sup>104</sup> TNA CAB 128/42; Conclusions of a meeting of the Cabinet held at 10 Downing Street on 27 April 1967.
- <sup>105</sup> TNA FCO 50/358, 'Negotiating brief for UK entry into the EEC effects on immigration in the UK and probable effects on immigration controls if Britain joins the EEC, 'Parliamentary: free movement of labour', Letter to Mr H Jenkins from P.A. McLean, 6 February 1970.
- <sup>106</sup> TNA PRO CAB 128/42; Conclusions of a meeting of the Cabinet held at 10 Downing Street on 27 April 1967.
- <sup>107</sup> TNA: PRO FCO 30/39/67, 'House of Commons Select Committee on Race Relations and Immigration: Inquiry into the effect of the United Kingdom's membership of the EEC on immigration and race relations, memo by the FCO, ND.
- <sup>108</sup> Consterdine, "Interests", p.43.
- <sup>109</sup> Hampshire, *Citizenship and Belonging*, p.15.
- <sup>110</sup> Ward, "Preference", p.156.

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